

Montana Constitutional & Statutory Provisions (Annotated)

Relating to Annual Sessions

Prepared for the SB 310 Steering Committee
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Montana Constitution

Article V. The Legislature

Section 6. Sessions. The legislature shall meet each odd-numbered year in regular session of not more than 90 legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the members.

History: Amd. Const. Initiative No. 1, approved Nov. 5, 1974.

Convention Notes

New provision. "Continuous body" does not mean the legislature is in continuous session but means the legislature has legal existence

even when not actually meeting. It will have regular annual sessions of 60 days. A legislature cannot pass a law that it can meet for more than 60 legislative days but can provide that future legislatures may meet longer. Legislature as well as the governor may call a special session. [Note — see Accelerated Effective Date compiler's comment to this section.]

Compiler's Comments

1974 Amendment by Initiative: Constitutional Initiative No. 1, proposed by initiative petition and approved at the general election held November 5, 1974, deleted two sentences at beginning of section that read: "***The legislature shall be a continuous body for two-year periods beginning when newly elected members take office. Any business, bill, or resolution pending at adjournment of a session shall carry over with the same status to any other session of the legislature during the biennium***", in first sentence after "shall meet" substituted "each odd-numbered year" for "at least once a year", and increased length of session from 60 to 90 days. Amendment effective December 31, 1974. (See text of initiative in final volume of 1975 Laws of Montana where text of initiative is erroneously referred to as Constitutional Amendment No. 3.)

Accelerated Effective Date: Section 1 of the Transition Schedule for implementing the 1972 Montana Constitution provided: "Section 1. Accelerated effective date: Section 6 (SESSIONS) and section 14 (DISTRICTING AND APPORTIONMENT) of Article V, THE LEGISLATURE, shall be effective January 1, 1973."

The Convention Note for section 1 of the Transition Schedule provided: "Proposed section on annual legislative sessions and reapportionment of the legislature would be effective January 1, 1973. The reapportionment commission could then be appointed by the 1973 legislature and report its plan to the 1974 legislature."

Former Constitutional Provision: This section is similar to Art. V, sec. 5 and 6, 1889 Mont. Const.

Cross-References

Power of Governor to convene Legislature, Art. VI, sec. 11, Mont. Const.

Convening of Legislature to determine ability of Governor to perform duties of office, Art. VI, sec. 14, Mont. Const.

Convening of Legislature to fill vacancy in certain state offices, 2-16-504.

Convening of Legislature following enemy attack, 2-16-513.

Time and place of meeting, 5-2-103.

Call of special session, Title 5, ch. 3.

Case Notes

DECISIONS UNDER 1889 CONSTITUTION

Interim Committees: Laws creating the legislative interim committees do not extend the limitation of 60 days specified by Art. V, sec. 5, 1889 Mont. Const. *State ex rel. James v. Aronson*, 132 M 120, 314 P2d 849 (1957), overruling *State ex rel. Mitchell v. Holmes*, 128 M 275, 274 P2d 611 (1954).

Passage of Bill After Time Limits Expire — Journals Binding on Courts: On collateral attack upon the validity of sections (since repealed) known as a chain store license tax law, based upon the ground that it was passed after the 60-day limit for holding a regular legislative session under Art. V, sec. 5, 1889 Mont. Const., had expired, the legislative journals showing on their face a compliance with such limitation, import absolute verity and are binding upon the courts. It was an error to admit parol testimony showing the contrary. *Standard Oil Co. v. St. Bd. of Equalization*, 110 M 5, 99 P2d 229 (1940).

Biennial Sessions: *For ordinary purposes, the Legislature may not convene more often than once in 2 years. State ex rel. Bennett v. St. Bd. of Examiners*, 40 M 59, 104 P 1055 (1909).

Attorney General's Opinions

Majority of Members, Not Majority of Each House, Required to Call Special Session: Under this section of the Montana Constitution, a majority of all of the members of the Legislature is required to request that the Legislature be convened in a special session. A majority of each house is not required to request that a special session be convened. 41 A.G. Op. 27 (1985), overruling 35 A.G. Op. 6 (1973).

Recorded Vote — Fulfills Requisites of a "Writing": *The Legislative Assembly may reconvene itself in special session by a recorded vote of the majority of each house voting on the proposal.* 35 A.G. Op. 7 (1973).

Article VIII. Revenue and Finance.

<p>Section 9. Balanced budget. Appropriations by the legislature shall not exceed anticipated revenue.</p>

Convention Notes

No change except in grammar. Requires legislature to stay within estimated revenue limits when appropriating funds.

Compiler's Comments

Former Constitutional Provision: This section is similar to Art. XII, sec. 12, 1889 Mont. Const.

Cross-References

Appropriation bills, Art. V, sec. 11, Mont. Const.
Governor to prepare budget, Art. VI, sec. 9, Mont. Const.
State debt, Art. VIII, sec. 8, Mont. Const.
Strict accountability of state money, Art. VIII, sec. 12, Mont. Const.
Legislative findings — liability exposure, 2-9-106.
Fiscal notes for legislative bills, Title 5, ch. 4, part 2.
The Legislative Finance Act, Title 5, ch. 12.
State Finance, Title 17.
Budgeting and appropriations, Title 17, ch. 7.
Statutory appropriations, Title 17, ch. 7, part 5.

Constitutional Convention Transcript Cross-References

Adoption, Trans. 2937, 2938.
Committee report, Vol. II 582, 586, 595, 946, 949, 950, 952, 1066.
Cross-references, 1889 and 1972 Constitutions, Vol. II 582.
Debate — committee report, Trans. 1376, 1490, 1493, 1494, 1508, 1509, 2135, 2136.
Debate — style and drafting report, Trans. 2244, 2926 through 2928.
Delegate proposal, Vol. I 307.
Final consideration, Trans. 2469, 2470.
Text as adopted, Vol. II 1098.

Case Notes (excerpted)

DECISIONS UNDER 1972 CONSTITUTION

Separation of Powers — Budget a Legislative Function: Notwithstanding Art. VI, sec. 9, Mont. Const., the budget is a legislative budget, not an executive budget. Article V, sec. 1 and 11, and Art. VIII, sec. 9, 12, and 14, Mont. Const., vest not only the power to approve appropriation bills and a budget in the legislative branch but to create an interim committee to gather information from other branches of government necessary to form a rational basis for its budget determinations. *State ex rel. Judge v. Legislative Fin. Comm.*, 168 M 470, 543 P2d 1317 (1975).

DECISIONS UNDER 1889 CONSTITUTION

Meaning: Article XII, sec. 12, 1889 Mont. Const., meant that no appropriation may be made or any expenditure authorized by the Legislature whereby the expenditures of the state during any fiscal year exceed the total of funds available and applicable to such appropriation or expenditure. Available funds include not only funds in the treasury not otherwise appropriated but money to be derived from taxes and other sources provided for by the Legislature for the year. *Graham v. St. Bd. of Examiners*, 116 M 584, 155 P2d 956 (1945).

Not Applicable to Initiative Levying Tax to Cover Appropriation: Initiative Measure did not violate Art. XII, sec. 12, 1889 Mont. Const. The term "appropriation" as used did not apply to an act providing for the issuance of bonds or debentures wherein the act creating the debt also levies a tax to pay it. *Martin v. Highway Comm'n*, 107 M 603, 88 P2d 41 (1939). See *Pioneer Motors, Inc. v. Highway Comm'n*, 118 M 333, 165 P2d 796 (1946).

Special Funds — Two-Year Limitation: The provision of Art. XII, sec. 12, 1889 Mont. Const., that appropriations shall not be made for a longer term than 2 years had no application to special funds. *State ex rel. Normile v. Cooney*, 100 M 391, 47 P2d 637 (1935).

Authorization of Future Appropriations: Section increasing the tax levy for state purposes by 1.5 mills for the period of 10 years and directing successive Legislatures for that period how the proceeds thereof shall be appropriated and authorizing the Assembly to make the appropriations for each of the 10 years was not unconstitutional. *State ex rel. Jones v. Erickson*, 75 M 429, 244 P 287 (1926).

Appropriations in Excess of Income Prohibited: Article XII, sec. 12, 1889 Mont. Const., must be interpreted to refer not only to the money raised by direct taxation but also to anticipated income from all other sources. *State ex rel. Toomey v. St. Bd. of Examiners*, 74 M 1, 238 P 316 (1925).

Time Limit on Appropriations: Article XII, sec. 12, 1889 Mont. Const., operated as an automatic limit so that an unlimited appropriation as to time would expire at the end of 2 years and was not void ab initio. *Hill v. Rae*, 52 M 378, 158 P 826 (1916).

Attorney General's Opinions

Expenditure Limits Not Extended to Future Biennial Budget Cycles: A County Commissioner questioned whether 17-8-106 (enacted 1981) limited the power of subsequent Legislatures to appropriate funds by establishing a cap on expenditures in the 1981 budget biennium and for future biennial budget cycles. The Attorney General noted that, consistent with constitutional design, *the Legislature lacks the power to pass a law that purports to establish binding legislative spending policy for future Legislatures. Each Legislature is vested with full legislative power, and there is no cap on state spending in the Montana Constitution.* Thus, the 1981 enactment of 17-8-106 placed no enforceable limits on the spending power of subsequent Legislatures. 51 A.G. Op. 4 (2005).

Montana Code Annotated

5-2-103. Time and place of meeting. Each regular session of the legislature shall be convened at the seat of government at 12 noon on the first Monday of January of each odd-numbered year or, if January 1 is a Monday, on the first Wednesday. The legislature shall meet at other times when convened by the governor or by the written request of a majority of the legislators or, when the legislature is in session, by a recorded vote of a majority of the legislators.

History: En. Sec. 160, Pol C. 1895; re-en. Sec. 55, Rev. C. 1907; re-en. Sec. 55, R.C.M. 1921; Cal. Pol. C. Sec. 235; re-en. Sec. 55, R.C.M. 1935; amd. Sec. 1, Ch. 279, L. 1973; amd. Sec. 5, Ch. 309, L. 1977; R.C.M. 1947, 43-205.

Cross-References

Sessions, Art. V, sec. 6, Mont. Const.
 Special sessions, Title 5, ch. 3.
 Call of special session by written request, 5-3-102.

Attorney General's Opinions

Recorded Vote — Fulfills Requisites of a "Writing": The Legislative Assembly may reconvene itself in special session by a recorded vote of the majority of each house voting on the proposal. 35 A.G. Op. 7 (1973).

Annual Sessions Decision Tree

Topic	Authority if change required	Current language	Action ?
Annual Session	Mont. Const. Art V. section 6	The legislature shall meet each odd-numbered year in regular session	
Length for each session	Mont. Const. Art V. section 6	of not more than 90 legislative days.	
Start of Session	Statute - 5-2-103, MCA	Each regular session of the legislature shall be convened at the seat of government at 12 noon on the first Monday of January of each odd-numbered year or, if January 1 is a Monday, on the first Wednesday.	
Content for each session	Mont. Const. Art VIII. Section 9	Appropriations by the legislature shall not exceed anticipated revenue.	
Biennial or annual budgeting	Statute - Title 17	Budget for each fiscal year in a biennium.	
Allow carryover	Constitution, statute, rule	(none) See language in 1972 Constitution (below).	

Carryover: The language adopted in the new 1972 Constitution was:

The legislature shall be a continuous body for two-year periods beginning when newly elected members take office. Any business, bill, or resolution pending at adjournment of a session shall carry over with the same status to any other session of the legislature during the biennium.

1974 Amendment by Constitutional Initiative No. 1, proposed by initiative petition and approved at the general election held November 5, 1974, deleted two sentences at beginning of section and in first sentence after "shall meet" substituted "each odd-numbered year" for "at least once a year".

Method for change that is required:

In some instances, such as content for each session or carryover, there may be a choice of whether to place the change in the Constitution, which would bind subsequent legislatures without a subsequent change, or use the statutes or legislative rule to allow subsequent legislatures to change as desired. Discussion of whether the legislature can bind a subsequent legislature by statute is warranted.